

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

DONALD RAY MIDDLEBROOKS,)
et al.,)
)
Plaintiffs,)
v.) **No. 3:06-0562**
) **JUDGE ECHOLS**
DEPUTY COMMISSIONER ROLAND)
Colson, et al.,)
)
Defendants.)

ORDER

In accordance with the Memorandum entered contemporaneously herewith, the Court rules as follows:

(1) The Report and Recommendation (“R&R”) entered by the United States Magistrate Judge on December 6, 2006 (Docket Entry No. 5) is hereby ACCEPTED IN PART and REJECTED IN PART. The R&R is REJECTED with regard to Plaintiff’s defective plumbing, retaliation, and civil conspiracy claims. The Supreme Court and the Sixth Circuit have ruled that prisoners are not required to plead exhaustion of administrative remedies and therefore, Plaintiff’s defective plumbing claim may not be dismissed as frivolous for failure to exhaust administrative remedies. Plaintiff will be permitted to proceed on his retaliation claim against Deputy Commissioner Roland Colson, Warden Ricky Bell, and Unit Manager Mike Slaughter and on his civil conspiracy claim against Warden Ricky Bell and Unit Manager Mike Slaughter. Plaintiff may not seek damages against these Defendants sued in their official capacities because the State of Tennessee has not waived its Eleventh Amendment immunity. Plaintiff may seek only declaratory and prospective injunctive relief. The R&R is ACCEPTED in all other respects.

(2) To the extent *pro se* Plaintiff Donald Middlebrooks attempts to represent other “Unit Two inmates,” such putative plaintiffs are hereby stricken from the Complaint. Plaintiff may represent only himself.

(3) Plaintiff’s retaliation claim against Deputy Warden Mike Crutcher is hereby DISMISSED WITH PREJUDICE for failure to state a claim.

(4) The Court hereby certifies that any appeal of the dismissals stated in paragraphs (2) and (3) would not be taken in good faith. See 28 U.S.C. § 1915(a)(3).

(5) Pursuant to Rule 72(a) and (b) of the Federal Rules of Civil Procedure and 28 U.S.C. § 636(b)(1)(A) and (B), this action is hereby referred to the Magistrate Judge for consideration of all pretrial matters and to supervise service of process on Defendant’s Roland Colson, Ricky Bell and Mike Slaughter. Any dispositive motions filed shall be considered by the Magistrate Judge, who shall submit proposed findings of fact and recommendations for disposition.

It is so ORDERED.



ROBERT L. ECHOLS
UNITED STATES DISTRICT JUDGE